

Docket No: 10-0237
10-0238 (Cons.)
Bench Date: 3/9/11
Deadline: N/A

M E M O R A N D U M

TO: The Commission

FROM: David Gilbert, Administrative Law Judge

DATE: February 23, 2011

SUBJECT: North Shore Gas Company
The Peoples Gas Light and Coke Company
Petition pursuant to Rider VBA of Schedule of Rates for Gas Service to Initiate a Proceeding to Determine the Accuracy of the Rider VBA Reconciliation Statement.

RECOMMENDATION: Enter attached Order.

North Shore Gas Company (“North Shore” or “NSG”) and The Peoples Gas Light and Coke Company (the “Utilities”) initiated these reconciliation proceedings under their tariff Rider VBA (an abbreviation for “Volume Balancing Adjustment”). The Commission approved Rider VBA for each Utility in February 2008. The primary purpose of revenue decoupling measures such as Rider VBA is to increase the likelihood that a utility will recover its allowed revenue requirement when volume-reduction policies, such as energy efficiency, are in place.

Annually, the Utilities must file statements of the reconciliation adjustment (“RA”) components that will apply on the following April 1, with separate adjustments for sales and transportation customers within each service classification. They must also petition for determination of the accuracy of those statements. The reconciliation period here is for calendar year 2009.

The RA components that will be effective for North Shore’s S.C. No. 1 sales customers and transportation customers, respectively, are a charge of 0.25 cents per therm and a credit of 0.14 cents per therm. Over the nine-month period beginning April 1, 2010, North Shore will recover \$236,508.23 from S.C. No. 1 sales customers and refund \$7,185.79 to S.C. No. 1 transportation customers.

The RA components that will be effective for North Shore's S.C. No. 2 sales and transportation customers, respectively, are charges of 0.08 cents per therm and 0.22 cents per therm. Over the nine-month period beginning April 1, 2010, North Shore will recover \$18,106.62 from S.C. No. 2 sales customers and \$76,926.72 from S.C. No. 2 transportation customers.

The RA components that will be effective for Peoples Gas' S.C. No. 1 sales customers and transportation customers are a charge of 0.60 cents per therm and a credit of 1.54 cents per therm, respectively. Over the nine-month period beginning April 1, 2010, \$2,035,352.60 will be recovered from S.C. No. 1 sales customers and \$360,648.34 will be refunded to S.C. No. 1 transportation customers.

The RA components that will be effective for Peoples Gas' S.C. No. 2 sales and transportation customers are charges of 0.30 cents per therm and 0.41 cents per therm, respectively. Over the nine-month period beginning April 1, 2010, \$518,632.10 will be recovered from S.C. No. 2 sales customers and \$836,751.03 will be recovered from S.C. No. 2 transportation customers.

Staff and the Attorney General actively participated in this proceeding. They do not dispute the accuracy of any of the foregoing computations and, accordingly, the attached Order approves those computations.

The AG raises the only disputed issue in the case, requesting that the Commission find Rider VBA unlawful and terminate it, based on principles recently articulated in Commonwealth Edison Co. v. Illinois Commerce Commission ("ComEd"), where the Illinois Appellate Court held that another utility rider contravened the rule against single-issue ratemaking. The AG contends that Rider VBA similarly fails to satisfy the ComEd criteria for rate riders. Both Staff and the Utilities respond that the legal sufficiency of Rider VBA cannot and should not be considered here.

The attached Order rejects the AG's recommendation. In previous VBA reconciliation proceedings, the Commission expressly held that a reconciliation proceeding is not a proper vehicle for attacking Rider VBA itself. Moreover, even if a challenge to the validity of the rider were permitted in a reconciliation case, the AG did not mount that challenge until the briefing stage of these dockets¹. Consequently, the Utilities had no opportunity to present facts that would distinguish ComEd from the instant case. ComEd is not self-effectuating - it does not prohibit riders as a matter of law. Thus, for due process, the evidentiary record would need to be reopened. The attached Order rejects reopening, particularly since the docket in which you approved Rider VBA is currently before the same district of the Appellate Court that decided ComEd, and the legality of Rider VBA is among the issues under review.

¹ Although the court issued ComEd on September 30, 2010, the AG did not mention that case - much less declare an intention to establish the invalidity of Rider VBA based on that case - at either the October 21, 2010 or December 1, 2010 hearings in these proceedings.

Furthermore, it is not clear that the Commission retains the power to address Rider VBA's legal sufficiency pending appellate review (and the AG does not provide a basis for concluding that you do). It is more likely that the appropriate course of action for the AG is to brief ComEd to the Appellate Court. Indeed, the AG states on exceptions that it "will not continue to pursue termination of Rider VBA in this docket" – though it does not say why it is doing this.

Accordingly, I recommend that the Commission enter the attached Order, which approves the Utilities' Rider VBA filings.

DG:fs